

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 23, 2008

STATE OF TENNESSEE v. QUINTIN O'NEAL DUKES

**Direct Appeal from the Circuit Court for Montgomery County
No. 40600320 John H. Gasaway, III, Judge**

No. M2007-01164-CCA-R3-CD - Filed February 4, 2008

The Defendant, Quintin O'Neal Dukes, pled guilty to aggravated burglary, and the trial court sentenced him to five years to be served on probation. Subsequently, the trial court issued a warrant alleging that the Defendant violated his probation, and, after a hearing, it revoked the Defendant's probation. On appeal, the Defendant claims the trial court abused its discretion by revoking his probation because the rules of probation were unlawfully imposed and there was not sufficient evidence that he violated his probation. Finding no error, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Roger E. Nell and Collier W. Goodlett, Jr., Clarksville, Tennessee, for the Defendant, Quintin O'Neal Dukes.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Cameron L. Hyder, Assistant Attorney General; John W. Carney, District Attorney General; John Finklea, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

On August 1, 2006, the Defendant pled guilty to aggravated burglary, and the trial court sentenced him to five years of probation. In addition to the standard probation requirements, such as periodic check-ins with his probation officer and drug screening, the Defendant was ordered to perform 150 hours of community service, complete a decision-making class, and pay restitution. On February 21, 2007, the trial court issued a warrant for the Defendant's arrest alleging that he violated

his probation terms. The warrant alleged that the Defendant did not provide proof of employment; did not inform Officer Rives of a change of residence or employment; did not report in October 2006, November 2006, January 2007, and February 2007; did not report for a drug screen; did not pay the required fees; did not complete the required community service; did not pay restitution; did not attend the decision making class; and did not provide a DNA specimen. On February 26, 2007, the court issued an amended warrant alleging that the Defendant carried a deadly weapon, provided alcohol to a minor, and criminally trespassed.

The trial court held a hearing and revoked the Defendant's probation for failing to comply with its terms. At that hearing, the following evidence was presented: Brian Rives, the Defendant's probation officer, testified that the Defendant began his probation in August 2006, and he reported in September, as he was supposed to do; however, the Defendant did not report in October or November 2006. Rives said the Defendant did report in December 2006, but then he did not report at all in January and February 2007. Rives said the Defendant never explained his disappearance. In addition to not checking in with Rives, the Defendant also never gave Rives proof of employment. Rives testified that the Defendant never took a drug screening test, and he never performed his required hours of community service. Furthermore, the Defendant did not attend the "Thinking for a Change" program, which teaches good decision-making skills. Rives stated that the Defendant was also cited for unlawful possession of a deadly weapon, criminal trespass, and minor in possession of alcohol. These charges were eventually dropped. On cross-examination, Rives testified the Defendant had fourteen probation conditions, which the Defendant agreed to meet to remain on probation.

The trial court found the Defendant violated his conditions of probation, and, therefore, it ordered him to serve the remaining portion of his sentence incarcerated. Specifically, the trial court found:

If your argument is that . . . [the] procedure [for explaining the probation terms] . . . doesn't place anybody under the obligation to comply with that they're told by a probation officer I just totally reject that. . . . The court finds [the Defendant] is in violation by failing to report as ordered, by failing to perform public service work, by failing to submit to a D-N-A sample, by failing to submit to drug screens, by failing to even start the counseling program [titled T]hinking for a [C]hange and by failing to provide proof of employment. . . . [The Defendant] just totally thumbed his nose at the whole release status that he was on – or the rules of his release status.

It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant claims the trial court abused its discretion by revoking his probation because the rules of probation were unlawfully imposed, and the State did not provide sufficient evidence that he violated his probation. The State counters that the trial court did not

abuse its discretion by revoking the Defendant's probation. We agree with the State.

We begin by pointing out that, although the Defendant takes issue with the difference between the written terms in his probation order versus the terms the trial court orally discussed with him, he did not attach the written order for our review. We cannot speculate about what it says. However, based on the testimony in the record, we infer that the Defendant did sign an order, and Officer Rives consulted that order when testifying. Addressing the Defendant's argument that the written terms explained only by the probation officer do not apply to him, the trial court explained:

This court is not under any obligation . . . to recite each and every one of the probation rules. . . . The probation officers don't make [the rules] up. They are standing orders from this court. The probation officer is the one that tells the person what the judge has already said on a previous occasion.

Based on the testimony in the record, it is evident that a probation order was signed by the trial court when the Defendant was sentenced to his five year probated sentence, and, as such, all terms and conditions listed in the order are binding and imposed by the court. "A court speaks through its orders." *Palmer v. Palmer*, 562 S.W.2d 833, 837 (Tenn. Ct. App. 1977). That the court did not expressly discuss every term with the Defendant, but let a probation officer perform that role, does not lessen the authority of those terms. The Defendant was bound by every term in his probation order.

We next address whether the State presented sufficient evidence to support a revocation of the Defendant's probation. When a trial court determines by a preponderance of the evidence that a probationer has violated the conditions of his or her probation, the trial court has the authority to revoke probation. T.C.A. § 40-35-311(e) (2006). Upon finding that the defendant has violated the conditions of probation, the trial court may revoke the probation and either: (1) order incarceration; (2) order the original probationary period to commence anew; or (3) extend the remaining probationary period for up to two additional years. *State v. Hunter*, 1 S.W.3d 643, 644 (Tenn. 1999); see T.C.A. §§ 40-35-308, 310, 311 (2006). The defendant has the right to appeal the revocation of his probation and entry of his original sentence. T.C.A. § 40-35-311(e). Upon a finding of a violation, the trial court is vested with the statutory authority to "revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered" *Id.*; accord *Hunter*, 1 S.W.3d at 646 (holding that the trial court retains the discretionary authority to order the defendant to serve his or her original sentence in confinement). Furthermore, when probation is revoked, "the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension" T.C.A. § 40-35-310.

Relative to when a trial court may revoke probation and to the standard of review in an appeal of such an action, our supreme court has stated:

We take note that a trial judge may revoke a sentence of probation or a suspended sentence upon a finding that the defendant has violated the conditions of his

probation or suspended sentence by a preponderance of the evidence. T.C.A. § 40-35-311. The judgment of the trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion. *State v. Williamson*, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981). In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment. *State v. Milton*, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984).

State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

In this case, the trial court found the Defendant violated various terms of his probation, and it subsequently revoked the probation. We conclude that the trial court did not abuse its discretion. Officer Rives testified to the Defendant's failure to report to him monthly, failure to obtain a job, failure to take a drug test, failure to complete his public service work, and failure to begin the "Thinking for a Change" program. These were all conditions of the Defendant's probation. We conclude there was sufficient evidence for the trial court to revoke the Defendant's probation. The Defendant is not entitled to relief on this issue.

III. Conclusion

After carefully reviewing the record and the applicable law, we conclude that the trial court did not abuse its discretion when it revoked the Defendant's probation. We affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE